

CHAPTER 7 -- ACQUISITION AND RELOCATION

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CHAPTER 7

ACQUISITION AND RELOCATION

I. OVERVIEW

The purpose of this chapter is to provide guidance to local CDBG grantees for dealing with the complex issue of acquiring real property. Two different acquisition procedures are defined and described: voluntary acquisition and non-voluntary acquisition. The appendix provides sample letters, notices, and forms that should be helpful to the grantee.

Grantees involved in the acquisition of real property for CDBG assisted activities should keep these key issues in mind:

- ❑ two options are available for grantees when acquiring property: voluntary acquisition or nonvoluntary acquisition;
- ❑ property owners must be paid at least the appraised fair market value for acquired property and improvements;
- ❑ Condemnation and litigation should be avoided and used only as a last resort;

sites for CDBG activities should be chosen so that displacement is avoided; and acquisitions should be documented in accordance with procedures outlined in Section IV, RECORDKEEPING REQUIREMENTS, of this Chapter.

II. APPLICABLE REQUIREMENTS

A. FEDERAL

1. Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, more commonly known as the Uniform Relocation Act Amendments of 1987, which amends the 1970 Uniform Relocation Act.
2. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), which provides uniform procedures for the acquisition of real property for federal or federally assisted projects, and ensures the uniform and equitable treatment of persons and businesses displaced as a result of federal or federally assisted projects.

HUD Handbook 1378 explains and summarizes the URA and implementing regulations at 49 CFR Part 24 and delineates the requirements that are passed on to state CDBG programs and their grantees.

Excerpts from Handbook 1378 – Tenant Assistance Relocation and Real Property Acquisition

5-1 APPLICABILITY OF ACQUISITION REQUIREMENTS (49 CFR 24.101).

- a. General. The requirements of this chapter apply to any **acquisition of real property for a project.**
- b. Less-Than-Full-Fee Interest in Real Property. The provisions of this chapter apply to: **the acquisition of permanent easements.**

5-2 BASIC ACQUISITION POLICIES (49 CFR 24.102).

- a. Expeditious Acquisition. The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.
- b. Notice to Owner. As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property. (Public Agencies may meet the requirement to notify the owner of the basic protections available **by providing and explaining, as appropriate, the HUD information brochure, "When a Public Agency Acquires Your Property"** (HUD-1041-CPD). It is available from HUD Field Offices.)

- 5-8. DONATIONS (49 CFR 24.108). A property owner may, after being fully informed by the Agency of a person's right to receive just compensation for property taken for a project, donate his or her property or any part thereof, any interest therein, or any compensation paid therefore, to the Agency as such owner shall determine. The Agency must obtain an appraisal of the real property unless the owner, in writing, releases the Agency from such obligation, or, as provided in Paragraph 5-2c(1)(b), the valuation problem is uncomplicated and the fair market value does not exceed \$2,500. **Whenever a State agency acquires real property under this donation provision, it must obtain the written consent of the owner. Such consent must indicate that the owner understands that under the URA he/she cannot be required to sell the real property to the State agency for less than its appraised fair market value.**

Section 2. State CDBG Program

- 8-21 APPLICABLE RULES. **The State CDBG Program (24 CFR 570, Subpart 1) is subject to the URA and implementing regulations at 49 CFR Part 24.**

3. Title VI of the Civil Rights Act of 1964, which prohibits the selection of sites for facilities of federally assisted programs with the purpose or effect of discrimination. For a more detailed explanation of applicable civil rights requirements refer to Chapter 5, CIVIL RIGHTS.

B. STATE

Relocation Assistance/Fair Treatment of Condemnees, Title 70, Chapter 31, Montana Code Annotated (MCA), is the state statute that compliments requirements in the federal legislation.

III. GRANTEE RESPONSIBILITIES

For each acquisition activity, the grantee must determine whether or not the acquisition is voluntary or non-voluntary. This will determine how the transaction is governed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which deals specifically with real property acquisition.

A. VOLUNTARY ACQUISITIONS

The acquisition can be considered voluntary, and not subject to the stricter requirements of the Uniform Relocation Act if, in the case of an acquisition by a state agency (i.e., an entity with the power of eminent domain), ALL of the following conditions are present:

- ☐ the state agency determines and informs the owner in writing that it will not use its power of eminent domain to acquire the property if negotiations fail to result in an amicable agreement; and
- ☐ no specific site or property is designated for acquisition, although the grantee may have a general geographic area in mind; and
- ☐ the property to be acquired is not part of an intended, planned or designated project area where all or substantially all of the property within the area will eventually be acquired; and
- ☐ the grantee informs the owner of its estimate of the fair market value of the property. An appraisal is not required; however, the estimate must be prepared by a person familiar with real estate values, and the grantee's files must include an explanation of the basis for the estimate. However, if the property owner requests an appraisal, one must be done.

The acquisition can also be considered voluntary, if, in the case of an acquisition by an entity that does not have the power of eminent domain, ALL of the following conditions are present:

- ☐ the grantee determines and informs the owner in writing that it does not have the power of eminent domain, and therefore will not attempt to acquire the property if negotiations fail to result in an amicable agreement; and
- ☐ the grantee informs the property owner of its estimate of the fair market value of the property. **This notice must be in writing and provided before the seller enters into the contract for sale.** An appraisal is not required; however, the estimate must be

prepared by a person familiar with real estate values, and the grantee's files must include an explanation of the basis for the estimate. An appraisal must be completed if requested by the property owner.

The required notices must be in writing and provided before the seller enters into the contract for sale. In those cases where there is an existing option or contract, the seller must be provided the opportunity to withdraw from the agreement after this information is provided.

If the grantee determines that an acquisition will be voluntary in nature, the grantee should adhere to the procedures outlined below:

1. If the grantee receives a voluntary offer of sale for an acceptable property, the offer should be documented in a manner similar to **Exhibit 7-B**, Voluntary Agreement Between Grantee and Individual Seller. Properties may be voluntarily donated as well. For such cases **Exhibit 7-K** can be used to reflect a donation rather than a sale.

The voluntary seller or donor should be provided with a copy of **Exhibit 7-L “When A Public Agency Acquires Your Property”** so as to be properly informed regarding the important features of the *Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*.

2. Real property being acquired through voluntary acquisition may be appraised in order to assure that fair market value is paid for the acquisition. The name of the appraiser, date of appraisal, appraised value of the property, and a copy of the appraisal must be retained in the grantee's CDBG Project File. An appraisal is not required for a voluntary acquisition in the following situations:
 - a) if the landowner agrees to donate the property;
 - b) if the grantee determines that an appraisal is unnecessary because the determination of valuation is uncomplicated and the fair market value is estimated at \$2,500 or less, based upon a review of available data¹ prepared by a person familiar with real estate values (with a written explanation of the basis for the estimate kept in the grantee's appropriate CDBG Project file); or
 - c) if the property owner agrees to waive the appraisal, and such approval is obtained in writing.
3. In cases involving voluntary acquisitions, property owners are not eligible to receive relocation assistance payments. However, tenants of acquired property are eligible for relocation assistance. The federal requirements for relocation of households or

¹ If the owner requests an appraisal, the grantee must obtain an appraisal.

businesses are extensive and extremely complex. **Displacement of households or businesses should be avoided whenever possible.** Contact your assigned CDBG Program Officer for further guidance on how to proceed for potential relocation situations.

4. To document acquisition of property on a voluntary basis, the grantee should complete the Voluntary Acquisition File Checklist (**Exhibit 7-C**).
5. A copy of the contract for sale, purchase price of the property, settlement costs, donation agreement (if applicable), recorded deed of property to the grantee, and proof of payment must be retained in the applicable CDBG Project file.

B. NON-VOLUNTARY ACQUISITIONS

If the acquisition is not voluntary in nature, and therefore subject to the stricter rules and regulations of the Uniform Relocation Act, the following procedures should be followed:

1. Obtain a Copy of HUD Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition. Grantees who have activities involving non-voluntary acquisition must obtain a copy of HUD Handbook 1378 available on-line before proceeding with the acquisition activities. Find the handbook at: <http://www.hud.gov/offices/cpd/library/relocation/policyandguidance/handbook1378.cfm>. This handbook provides the grantee with guidelines for acquisition under the Uniform Relocation Act, and it should be used in conjunction with instructions in this Chapter. **Exhibit 7-J** describes a typical acquisition process under the Uniform Relocation Act.
2. Send Preliminary Acquisition Notice. A Preliminary Acquisition Notice (**Exhibit 7-D**) must be delivered in person or sent by registered mail to the property owner to inform the property owner of the grantee's intent to acquire the property and of the owner's basic protections under the Uniform Relocation Act. The notice should include information about the activity for which the property will be used, indicate that the notice is not a notice to vacate the property, describe the procedures by which the grantee will proceed with its attempt to acquire the property, and provide the name and telephone number of a local contact person who can answer questions and provide further information. **The grantee's CDBG Project Manager should enclose a copy of HUD's information booklet, When a Public Agency Acquires Your Property, or its equivalent.** This booklet is available from MDOC.
3. Have Property Appraised to Determine Fair Market Value. Once the grantee has obtained preliminary title evidence, a boundary description, and a legal description of the property to be acquired, it should have the property appraised. The term "appraisal" means a written statement independently and impartially prepared by a qualified, professional appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

The Uniform Relocation Act requires that the public agency must compensate the owner at no less than the fair market value of the property. Although only one appraisal is required by law, past experience suggests that two appraisals are preferred in instances where the property is valued at greater than \$25,000. Regardless of the number of appraisals, **the property owner or his or her representative must be invited to accompany the appraiser during his/her inspection of the property.**

To determine the standards for a "qualified professional appraiser," the Montana CDBG program recommends, at a minimum, professional affiliation with one of the eight national appraisal organizations (see list below), or a listing on the Montana Department of Transportation's list of appraisers.

List of National Appraisal Organizations:

- American Society of Appraisers
- American Institute of Real Estate Appraisers
- American Society of Farm Managers and Rural Appraisers
- International Association of Assessing Officers
- International Right of Way Association
- National Association of Independent Fee Appraisers
- National Society of Real Estate Appraisers
- Society of Real Estate Appraisers

The appraiser must also be someone who does not have interest in the property, nor can the appraiser be the person secured as an agent to sell it.

Under the Uniform Relocation Act an appraisal is not required in the following situations:

- ☐ if the landowner agrees to donate the property. However, the landowner(s) must first be informed of their rights under the Uniform Relocation Act, including the right to receive just compensation. They must also state in writing that they have been informed of these rights; that they agree to waive the appraisal requirement; and they have been informed that the grantee will not exercise its right of (or does not have the power of) eminent domain as a means of acquiring the property. (Exhibit 7-K provides a model for waiver of procedures required under the Uniform Relocation Act when a property donation is involved);
- ☐ if the determination of valuation is uncomplicated and the fair market value is estimated at \$2,500 or less, based upon a review of available data prepared by a person familiar with real estate values (with a written explanation of the basis for the estimate kept in the grantee's appropriate CDBG Project file); or
- ☐ if the landowner agrees to waive the appraisal, and approval of such waiver is obtained in writing.

Contracting for appraisal services is subject to federal requirements for procurement of professional services (see Chapter 3). **Exhibit 7-E**, Agreement for Appraisal Services (Acquisition) should be used when securing appraisal services for CDBG acquisitions.

4. Have Appraisal Reviewed. The Uniform Relocation Act requires that a “qualified review appraiser” examine all appraisals. The Acquisition File should include the review appraiser's certification and the recommended or approved value of the property in a signed written statement. An explanation of the basis for the recommendations should be included as well. (See **Exhibit 7-F** for a sample Appraisal Report Review Form). Contracting for review appraisal services is also subject to federal requirements for procurement of professional services (see Chapter 3, Procurement). The review appraisal can also be waived so long as the landowner(s) are informed of their rights and agree to the waiver in writing.
5. Determine Just Compensation for the Property. The grantee will establish what it considers to be a fair price for the property. **This amount shall not be less than the review appraiser's recommendation as to the fair market value of the property.**
6. Make a Written Offer to the Owner. As soon as possible following the determination of just compensation for the property, the grantee should submit a written offer to the property owner. The grantee is encouraged to deliver the written notice in person, although this is not required under the Uniform Relocation Act. A written statement of the basis for the offer, must be included with the notice to acquire. (See **Exhibit 7-G** for a sample Written Offer to Purchase that includes a Statement of the Basis for Determination of Just Compensation.)
7. Review Any Additional Materials Related to Determination of the Purchase Price. Based on discussions with the owner(s) and any additional information that they have supplied, the grantee may determine that the original appraisal requires updating, or the grantee may request a new appraisal. If subsequent updating or a new appraisal justifies a higher rate of compensation, the grantee should immediately establish a new offer price and submit the new offer in writing as described in step 6 above.
8. Administrative Settlement. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized MDOC official approves such administrative settlement as being reasonable, prudent, and in the public interest. A written justification explaining the basis for the settlement shall be included in the grantee's files (see Section C, FINAL OFFER BEFORE INITIATING CONDEMNATION PROCEDURES - ADMINISTRATIVE SETTLEMENT, below).
9. Make Payment or Make a Final Offer Before Initiating Condemnation Procedures. **In those cases where the grantee and the property owner arrive at a mutually agreed upon price, the grantee must make direct payment to the owner before requiring that possession of the property be surrendered.** In addition, the

grantee must reimburse the owner for all reasonable expenses necessarily incurred for:

- ☐ recording fees, transfer taxes, documentary stamps and similar expenses incidental to conveying the real property to the grantee;
- ☐ penalty costs and other charges for prepayment of any preexisting mortgage; and
- ☐ the pro rata portion of any prepaid real property taxes, allocable to the period after the grantee obtains title to the property.

However, the grantee is not required to pay costs required solely to perfect the owner's title.

The Uniform Relocation Act specifically prohibits the grantee from taking actions such as threatening to move up the condemnation date in order to coerce the property owner into agreeing to the agency's final offer.

C. FINAL OFFER BEFORE INITIATING CONDEMNATION PROCEDURES - ADMINISTRATIVE SETTLEMENT

The Uniform Relocation Act allows for an administrative settlement when reasonable efforts at negotiation have failed. A written justification must be prepared which indicates that available information supports such a settlement (e.g., appraisals, recent court awards, estimated trial costs, and valuation problems). The grantee and MDOC must agree that such a settlement is reasonable, prudent, and in the public interest.

MDOC generally considers a figure that does not exceed 10 percent of the established just compensation as a reasonable alternative to condemnation. If the grantee's justification for an administrative settlement appears unreasonable, MDOC may determine the excess payment to be an ineligible cost under the CDBG program. The purpose of this provision is to allow the grantee flexibility in the negotiation process, while discouraging windfall profits from the sale of properties for use in publicly assisted projects.

The final offer should be hand delivered or sent by registered mail. It must include: the final offer; an invitation to discuss again the basis of the final offer; and the anticipated date on which the grantee intends to begin condemnation procedures. The notice should be received by the property owner at least seven days prior to the date provided for the commencement of condemnation proceedings (see Exhibit 7-H for a sample Final Notice to Acquire by Negotiation).

D. CONDEMNATION PROCEEDINGS

In the event that the property cannot be acquired by negotiations, condemnation proceedings can begin on the date provided in the Final Notice to Acquire by Negotiations. The Uniform Relocation Act requires that an amount not less than the grantee's approved appraisal of the fair market value of the property be deposited with the court for the benefit of the owner. Section 70-30-101, MCA describes state procedures for counties and municipalities when exercising the power of eminent domain. Any grantee involved in a condemnation proceeding is strongly encouraged to work closely with their attorney to assure compliance with relevant state and federal laws.

E. OTHER ACQUISITION CONSIDERATIONS

1. Donations. Donation of property can occur under either the voluntary acquisition process or under provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Relocation Act). The Act allows for reduction of the costs of acquiring land without reducing the protection of affected persons, by permitting the full or partial donation of real property to an acquiring agency as long as the donor is informed of his or her right to just compensation. An owner of real property to be donated may waive the right to appraisal of the property, as long as he or she is informed that they are entitled to an appraisal. For donations falling under the Uniform Relocation Act, the CDBG Acquisition File should contain documentation that the owner was informed of his or her rights when agreeing to make the donation, and the file must include a copy of the deed for the donated property.
2. Decision Not To Acquire. If, at any time after the Preliminary Acquisition Notice (**Exhibit 7-D**) has been sent, a decision is made not to buy or condemn a property, the property owner and any tenants should be notified in writing. The notice should specify that any person moving from the property thereafter will not be eligible for relocation payments and assistance.
3. Uneconomic Remnant. If the grantee acquires only a portion of the owner's parcel and the remaining portion(s) would have little or no utility or economic value, the agency must offer to acquire the "uneconomic remnant" as part of the total acquisition offer.
4. Tenant-Owned Improvements. The grantee must offer "just compensation" for any improvements on the acquired property. Just compensation is the amount that the improvement adds to the total value of the real property, or the salvage value of the improvement, whichever is greater.
5. Owner Retention of Improvements. If the property owner chooses to remove any improvements that have been included in the fair market appraisal of the property, the grantee may subtract the salvage value of the removed improvements from the purchase offer. For example, if a property value includes a utility shed that the owner removes from the property upon public acquisition, the offer to the owner may be decreased to the appraised property value, less the salvage value of the shed.

6. Rental Payments. If the grantee agrees to allow the owner to remain on the property for a period of time following payment for acquisition, it can charge the owner rent for an amount up to the fair market rent for the period during which the owner remains on the property.

IV. RECORDKEEPING REQUIREMENTS

The grantee is responsible for maintaining files and documentation on each property acquired. To assist the grantee in complying, a Uniform Relocation Act Governed Acquisition Checklist (**Exhibit 7-I**) has been developed to serve as a left inside attachment in each CDBG Acquisition File. Through using it and maintaining a comprehensive file in chronological order, the grantee can better and more easily comply with Uniform Relocation Act documentation requirements, and complete the acquisition process in a manner that complies with requirements of the Act. At a minimum, the CDBG Acquisition File should include the following items:

- ☐ copy of the Public Invitation for Acquisition of Real Property (**Exhibit 7-A**);
- ☐ completed Uniform Relocation Act Governed Acquisition Checklist (**Exhibit 7-I**) and completed Voluntary Acquisition File Checklist (**Exhibit 7-C**), if applicable;
- ☐ description of property and reasons for acquisition;
- ☐ completed Preliminary Acquisition Notice (**Exhibit 7-D**); Voluntary Agreement Between Grantee and Individual Seller (**Exhibit 7-B**); and Waiver of Procedures and Rights Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (**Exhibit 7-K**);
- ☐ appraiser contracts [**Exhibit 7-E**, Agreement for Appraisal Services (Acquisition)];
- ☐ invitation of owner to accompany appraisers;
- ☐ copy of appraisals;
- ☐ completed Appraisal Report Review Form (**Exhibit 7-F**);
- ☐ copy of the Written Offer to Purchase, which includes a Statement of the Basis for Determination of Just Compensation (**Exhibit 7-G**);
- ☐ records of any negotiations with owner;
- ☐ copy of any materials supplied by the owner to determine just compensation;
- ☐ copies of any written agreements to waive or modify benefits or compensation requirements under the Uniform Relocation Act;

- ❑ copy of agreements for compensation of related improvements;
- ❑ if applicable, completed Final Notice to Acquire by Negotiations (**Exhibit 7-H**);
- ❑ evidence of payment;
- ❑ copy of deed and settlement costs;
- ❑ justification of excess payment (if applicable); and
- ❑ notice of initiation of condemnation (if applicable).

V. RELOCATION

The federal requirements for relocation of households or businesses are extensive and extremely complex and were intended by Congress to discourage the displacement of low and moderate income persons by CDBG projects. The amendments generally require the one-for-one replacement of all occupiable, lower income units that are demolished or converted to other uses as a direct result of CDBG activity. The amendments further mandate that any replacement housing be affordable to lower income families for at least 10 years and authorizes assistance to displaced lower income persons that, in some cases, is more generous than they could have received under the federal Uniform Relocation Assistance Act.

Grantees planning CDBG-assisted projects that may involve either temporary or permanent displacement of local residents or businesses as a result of their acquisition activities should contact their CDBG Program Specialist for guidance on the federal requirements that apply.

CDBG grant recipients are strongly encouraged to design their programs so as to avoid actual or potential relocation as part of their CDBG projects. Grantees who foresee or contemplate a relocation action as part of their project should contact their CDBG program specialist immediately for further guidance.

CHAPTER 7

EXHIBITS

- 7-A Public Invitation for Acquisition of Real Property**
- 7-B Voluntary Agreement Between Grantee and Individual Seller**
- 7-C Voluntary Acquisition File Checklist**
- 7-D Preliminary Acquisition Notice**
- 7-E Agreement for Appraisal Services (Acquisition)**
- 7-F Sample Appraisal Report Review Form**
- 7-G Written Offer to Purchase (including Statement of the Basis for Determination of Just Compensation)**
- 7-H Final Notice to Acquire by Negotiations**
- 7-I Uniform Relocation Act Acquisition File Checklist**
- 7-J Typical Acquisition Process Under the Uniform Relocation Act**
- 7-K Waiver of Procedures and Rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**
- 7-L “When A Public Agency Acquires Your Property”**